

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5630 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VRAJLAL BHAGAVANJI DHAKAN

Versus

THE MAMLATDAR & PRESCRIBED OFFICER

Appearance:

MR ND NANAVATI for Petitioners

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/97

ORAL JUDGEMENT

1. The petitioners challenge by this petition the legality and validity of the order passed by the respondent No.1 dated 22-1-1986 by which the petitioners were called upon to pay Rs.38390-50 towards the entertainment tax as ordered by the Opponent No.2 in Entertainment Appeal No.12/84 decided on 3rd December, 1985.

2. The petitioners were given a show-cause notice

dated 7-4-1984 by the respondent No.1 wherein the petitioners were called upon to show cause as to why entertainment tax should not be recovered from them for exhibiting the film 'Bobby' on video without permission. It was found that 50 persons were seeing the film on video and the petitioners have collected Rs.2/- per person. The petitioners replied to that show cause notice. The Rojkam, panchnama dated 30th March, 1984 was prepared. After hearing the petitioners, the respondent No.1 had determined Rs.30960-10 to be paid towards the entertainment tax by the petitioners and further ordered for penalty of Rs.500/- under section 15 of Gujarat Entertainment Tax Act, 1977. The petitioners against this order filed an appeal before the respondent No.2 which came to be dismissed on 23-11-1985/3-12-1985. After the appeal was dismissed, the recovery was started of the aforesaid amount by the respondent No.1 vide its notice dated 22-1-1986. Hence, this special civil application.

3. This special civil application has come up for admission before this Court on 24-4-1987 and this Court has ordered that if the petitioner deposits Rs.12000/= within two weeks from today, notice to issue to the respondents. If he fails to deposit, matter to be placed before us on reopening of the Court. After 24th April, 1987 this matter has been placed on board only on 27th August, 1997. So for these ten years the matter was not placed on Board. However, the counsel for the petitioners admit that the aforesaid amount as ordered by this Court has not been deposited.

4. The authorities under the Entertainment Tax Act found as a fact that on 30th March, 1984 the petitioners were exhibiting film 'Bobby' on video and 50 persons were there from whom they have collected Rs.2/- per person. This factual aspect of the matter has not been controverted by the petitioners. Only defence has been taken by the petitioners of the technical nature. The petitioners are unable to satisfy this Court that on 30th March, 1984 50 persons were not there seeing the film 'Bobby'. In view of this fact, the defence of the petitioners that their family members or relatives were there is difficult to accept. The number of persons is significant and which clinches the issue. I do not find any illegality in the orders passed by the respondents No.1 and 2. The petitioners are liable for the payment of entertainment tax as demanded. The interference of this Court is not called for in this matter. This petition is filed by the petitioners under Article 226 of the Constitution and I do not find that any prejudice has

been caused to the petitioners in the matter. It is a case where the petitioners have attempted to evade the tax.

5. In the result, this special civil application fails and the same is dismissed.

zgs/-